IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3328 OF 1991

Chandrayya Mutwayya Irabatti,
Aged 28 years, Occ. Business,
Residing at 1340, Bhadravati Peth,
Solapur.
....Petitioner.

Vs.

Sidram Ganpat Ingale,
Aged 37 years, Occ. Business,
Residing at No.4, Municipal Colony,
Raviwar Peth,
Solapur.
....Respondent.

Mr. M.R. Katikar for the Petitioner.
Mr. V.B. Rajure & Nitin Jamdar for the Respondent.

CORAM : R.S. MOHITE,J.
DATED : 22.11.2005.

ORAL JUDGMENT:

1. By this writ petition, the petitioner who is the original plaintiff in Special Civil Suit No.139 of 1987 filed in the court of III Joint Civil Judge, S.D., Solapur impugns a judgement and order dated 14.2.1991 passed by the III Joint Civil Judge, S.D., Solapur dismissing the plaintiff’s suit with costs. By the impugned judgment and order the plaintiff’s suit was dismissed as not maintainable for want of registration of the firm "M/s. Asian Gas Agency". The Trial Court

concluded that the suit was barred by provisions of Section 69 of the Indian Partnership Act, 1932.

2. The case of the plaintiff as per his averments in the plaint was briefly as follows:

. That the plaintiff and the defendant were partners of the firm named "M/s. Asian Gas Agency". There were five other partners of the firm. A partnership deed was executed by and between seven partners on 22.4.1984. The defendant had been conferred an agency by Hindustan Petroleum Limited. The defendant however, did not have capital needed to conduct the business and he therefore, requested the plaintiff to provide the same. By taking the plaintiff and other partners into confidence, the partnership deed referred to hereinabove was executed. It was agreed that the plaintiff and one other partner by name Sudhir Kharatmal would be contributories to the capital of the firm. But, later on, it was the plaintiff who had contributed the entire capital. Later on the disputes arose between the partners and on 10.11.1986 at about 8.30p.m., the Manager of the plaintiff informed the plaintiff that he had seen a different lock on the shop of the firm. On making enquiry, the plaintiff learnt that the defendant had broken the lock put on the premises and put his own

lock. When the plaintiff enquired with the defendant, the defendant threatened the plaintiff through some antisocial elements. The plaintiff then lodged a police complaint. He also filed a special civil suit bearing No.139 of 1987 in the Court of Civil Judge, S.D., Solapur for recovery of amount of Rs.2,99,169.60ps. being valuation of items as shown in Paragraph 4 of the plaint.

. In the said suit, on 16.8.1990, on behalf of the defendant an application was made for deciding as to whether the suit of the plaintiff was maintainable for want of registration of the firm "M/s. Asian Gas Agency" and to frame a preliminary issue in this regard. On this application, an order came to be passed by the Trial Court on 13.1.1991 allowing the same and the Trial Court thus framed a preliminary issue relating to the maintainability of the suit. This issue was ultimately decided against the plaintiff by the impugned order dated 14.2.1991.

3. On behalf of the petitioner, it was argued that the suit was maintainable and not barred by Section 69 of the Indian Partnership Act, as the plaint contained an averment that the defendant had fraudulently persuaded the plaintiff and other partners to form a partnership

firm. I am not at all impressed by this argument. The averments contained in the plaint are clear and categorical and speak about the existence of the firm and about there being seven partners of this firm.There is however, another point which goes to the root of the matter. Under Section 69 of the Indian Partnership Act, the suits which are barred by Section 69(1) are suits to enforce a right arising out of a contract and to enforce a right conferred by the Indian Partnership Act. We are not concerned with Section 69(2) of the said Act in the present case as the suit in this case was not against a third party. On perusal of Section 69(2), it can be seen that same applies to the suit enforce right arising out of contract. No doubt, Section 69(3) provides for certain exceptions but these exceptions are to the two kinds of suits contemplated by Section 69(1) and 69(2) of the Partnership Act, 1932.

4. In the said Section 69 of the Indian Partnership Act, an amendment introducing Section 69(2)(A) was introduced by Maharashtra Act 29 of 1984 (brought into effect on 1.1.1985), which brought about certain changes and introduced a bar in respect of suits to enforce any right for the dissolution of a firm or for accounts of the dissolved firm or any right or power to realise the property of the dissolved firm unless certain conditions

contained in the said Section 69(2)(A) were made.

5. In my view, the suit filed by the plaintiff in the present case was a suit for recovery of damages for a misconduct committed by another partner by his act of forcible breaking the lock of the shop of the partnership firm and taking away certain articles lying therein. One other wrongful act attributed to him is the surrendering of a godown and collecting money from the owner. In my view, by no stretch of imagination a suit for damages to recover the goods so wrongfully taken away can be said to be suit for enforcing a right arising out of contract or for enforcing a right conferred by the partnership Act. The suit of this nature is essentially a suit for damages for a misconduct and would not be barred by Section 69. I am fortified this view by judgment of the Division Bench of this court in the case of **Navinchandra Vs. Moolchand reported in A.I.R. 1966 Bombay Page 111.** In that case there were two partners of an unregistered partnership firm. The said firm had entered into a contract with the Government. One of the partner by his misconduct caused the Government to cancel the said contract and to recontract the same work in his own name. It was held by the Division Bench that the contract secured by this partner in his own name must be held to be for the

benefit of the partnership and if the contract was given to B for a lesser amount, it was this erring partner who brought about the situation and therefore, would be liable for the same on account of his fraudulent conduct as such. For deciding this case the Division Bench in Paragraph 19 observed as under :

> "Even a suit by one partner against another for damages for misconduct in the ultimate analysis, must fall within the exceptions. When a partner claims damages on the ground of the misconduct of his partner, what he really means is that the partner must make good the loss sustained by the partnership by his misconduct and the amount so brought into the partnership should be divided between the partners. The amount brought into the partnership is, of course, the realisation of the properties of the partnership. One must notice in this connection that the Partnership Act imposes no disability on the partner of an unregistered firm entering into contracts either with third parties or amongst themselves. The prohibition is only in respect of the partners of the firm being able to file suits during the continuance of the partnership. Suits, however, of the nature referred to in the exception could be filed. In Beharilal Shyamsunder Vs. Union of India. A.I.R. 1960 Patna 397, a suit for damages against a third party was held maintainable. In AIR 1959 Orissa 110, referred to earlier, a suit for money due from a partner of a dissolved firm to another was held to be maintainable. It is not necessary to state what kind of suit may not be maintainable as between partners. Suffice is to say that the present suit, even as a suit for damages, is maintainable".

6. In my view, therefore, the impugned judgment and order holding that the suit of the plaintiff was barred by Section 69 of the Indian Partnership Act is not

according to law and is required to be quashed and set aside. Accordingly, the same is quashed and set aside. Rule in the writ petition is made absolute in terms of prayer clause (b). In the circumstances, there will be no order as to costs.

(R.S. MOHITE, J.)